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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re M.C., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

T.L.,

Defendant and Appellant.

G053073

(Super. Ct. No. DP024889)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,  
Gary Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Law Offices of Vincent W. Davis & Associates and Stephanie M. Davis for  
Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Debbie Torrez,  
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

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## **INTRODUCTION**

T.L. (Mother) is the mother of M.C., who was born and taken into protective custody in April 2014. Mother appeals from the juvenile court's order denying her petition under Welfare and Institutions Code section 388<sup>1</sup> to modify the court's prior order terminating reunification services. Mother requested the juvenile court to reinstate reunification services, liberalize Mother's visits with M.C., and release M.C. to Mother's custody. We conclude the juvenile court did not err by denying Mother's section 388 petition without an evidentiary hearing because Mother did not make a prima facie showing of changed circumstances justifying the requested relief or that such relief would be in M.C.'s best interest. We therefore affirm.

In a related appeal (case No. G052998), M.C.'s maternal grandmother (K.L.) appeals from the juvenile court's order denying her petition under section 388. We affirm that order by separate opinion.

## **FACTS AND PROCEDURAL HISTORY**

### **I.**

#### **Dependency Petition**

Mother gave birth to M.C. in April 2014. Mother had a history of heroin and methadone use, and M.C. tested positive for methadone the day after she was born. A few weeks later, Mother was arrested on an outstanding warrant for forging narcotic prescriptions. When Mother was arrested, she tested positive for methamphetamine, opiates, and marijuana. M.C. was taken into protective custody.

On May 1, 2014, the Orange County Social Services Agency (SSA) filed a juvenile dependency petition (the Dependency Petition) alleging failure to protect under

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<sup>1</sup> Code references are to the Welfare and Institutions Code.

section 300, subdivision (b). As amended by interlineation, the Dependency Petition alleged:

“b-1. On April 28, 2014, [M]other . . . was arrested for not reporting to probation, on the charge of forging narcotics prescriptions. [M]other also tested positive for opiates, methamphetamine, and marijuana. During the week of April 21, 2014, [M]other used marijuana while in a vehicle with the alleged father . . . . [M]other knowingly but not simultaneously abused drugs while breastfeeding the child, M[.C.].

“b-2. [M]other . . . has an unresolved substance abuse problem that includes, but may not be limited to, the abuse of opiates, methamphetamine, and marijuana. [M]other also has a long history of heroin abuse. [M]other has also been taking methadone.

“b-3. [M]other . . . exposed the newborn child, M[.C.] to drug abuse. [M]other and child were residing with the child’s maternal relatives who abuse marijuana regularly. The child’s home smelled of marijuana, and drug paraphernalia was in and around the home. After [M]other’s arrest, she left the child in the care of maternal relatives who are inappropriate caretakers. On April 30, 2014, the child M[.C.] was inconsolable while in the care of the maternal relatives. She exhibited a high[-]pitch[ed] cry, shaking, disturbed sleep, intermittent bouts of coughing, and she had diarrhea. The child had a severe diaper rash that was red, inflamed, and raw. The alleged father . . . knew that [M]other and the maternal relatives abuse drugs.

“b-4. The father . . . used substances includ[ing], but may not be limited to, the abuse of alcohol, heroin, marijuana, and methamphetamine. [The father] self-reports that during the week of April 21, 2014, he was with [M]other in a vehicle while she used marijuana. [¶] . . . [¶]

“b-6. [M]other . . . has a criminal history that includes arrests and/or convictions for: Business & Professions Code 4140—possess hypodermic needle/syringe; Health & Safety Code 11350(a)—possess narcotic controlled substance;

Penal Code 460(b)—burglary: second degree; Health & Safety Code 11368—forge/alter narcotic prescription.”

When taken into protective custody, M.C. was living in K.L.’s house. M.C. was found to have diarrhea and diaper rash so severe that “the baby’s entire bottom was red, inflamed, and raw as at least one layer of skin had sloughed off.” M.C. shook, emitted a high-pitched cry, was inconsolable, and had disturbed sleep.

On April 29, 2014, the assigned social worker made an unannounced visit to K.L.’s home. The social worker confirmed there were marijuana and drug paraphernalia around the house, which smelled of marijuana. K.L. admitted she smoked marijuana the previous day and confirmed that every family member smoked marijuana on a regular basis. K.L. claimed she did not smoke marijuana in M.C.’s presence or in M.C.’s room. K.L. stated she did not have a medical marijuana card.

On May 2, 2014, the juvenile court ordered M.C. detained and removed her from parental custody. K.L. was denied placement. M.C. was placed in an emergency shelter home.

## **II.**

### **Jurisdictional/Dispositional Hearing**

In an interview with the assigned social worker, Mother reported she had a long history of heroin use and had been on methadone for the past seven years, including the period of time during which she was pregnant with M.C. Mother stated that on the day before she was arrested, she used heroin and believed methamphetamine had become stuck to the heroin tar.

In the jurisdiction/disposition report, SSA recommended sustaining the Dependency Petition, declaring M.C. a dependent child of the court, and offering reunification services to Mother. According to SSA, “[M]other reports that she is very motivated to become clean and reunify with her child.”

In May 2014, Mother was provided referrals for drug testing, substance abuse treatment, self-help meetings, and parenting education classes. She was encouraged to enroll in services upon release from jail. Mother was released from jail on June 10, 2014.

Trial was conducted on June 19, 2014. The juvenile court ordered the Dependency Petition amended by interlineation. Mother and M.C.'s father, C.C. (Father), pleaded no contest. The court found the allegations of the Dependency Petition true by a preponderance of the evidence and declared M.C. to be a dependent child of the court. Custody of M.C. was removed from Mother and Father and placed with SSA for suitable placement. The court approved the case plan recommended by SSA and ordered reunification services.

### **III.**

#### **Six-month Review Hearing**

In December 2014, SSA recommended the juvenile court terminate family reunification services as Mother had relapsed and Father was incarcerated. Mother had weaned herself off of methadone by August 2014 but then resumed drug use and tested positive for morphine and heroin on five separate occasions. Mother blamed the drug testing lab before admitting she had relapsed.

Mother enrolled in perinatal drug abuse treatment in June 2014, but did not complete the program. In October, Mother enrolled in the Corona Substance Abuse Program, and, in November, successfully completed a 10-week parenting education class. Mother initially was given six hours per week of monitored visits with M.C. In November 2014, the amount of Mother's visitation was increased.

M.C. remained with the emergency placement until November 2014, when she was placed in the home of her paternal grandmother. At some point, K.L. sought to have M.C. placed with her, and SSA denied that request. That decision was overturned

(apparently through SSA's internal administrative appeal process), but K.L. withdrew her placement request.

Between December 2014 and January 2015, Mother missed four drug tests. In January 2015, Mother's substance abuse counselor reported that Mother appeared sleepy during sessions, and Mother left the drug treatment program for an hour after learning she would have to be drug tested.

In January 2015, the court held a contested six-month review hearing. The court found that returning M.C. to the custody of Mother and Father would create a substantial risk of detriment to M.C.'s safety, protection, physical, or emotional well-being, and that reasonable services had been provided. The court found that out-of-home placement was necessary, continued family reunification services for Mother and Father, and scheduled a 12-month review hearing for June 2015.

#### **IV.**

##### **Transfer to Riverside County; Caretaking Issues; Placement of M.C. in Foster Care**

In February 2015, the juvenile court ordered the case transferred to Riverside County because of Mother's and Father's place of residence. Mother lived in Riverside County with K.L., K.L.'s husband, Michael W.,<sup>2</sup> and Michael W.'s elderly parents, who employed Mother and K.L. as their caregivers. Mother also participated in drug abuse treatment and drug testing in Riverside County. A few weeks later, the Riverside County Juvenile Court found that Mother and Father were residents of Riverside County and accepted the transfer from Orange County. The court authorized the Riverside County Department of Public Social Services (DPSS) to "liberalize" visits with Mother and Father, "contingent upon a suitable home evaluation and the parents making the child available to the [DPSS]."

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<sup>2</sup> Michael W. is referred to variously in the record as K.L.'s husband, fiancé, and boyfriend.

DPSS reported that K.L., M.C.'s maternal great-grandmother, the paternal grandmother, and M.C.'s babysitter, Vicky S. (Vicky), were authorized to monitor the visitation. The visits were to take place in Orange County and no visits were to take place at K.L.'s home in Riverside County.

On March 17, 2015, DPSS received a report that Mother and Father were living with M.C. and the paternal grandmother, were caring for M.C. while the paternal grandmother was at work, and appeared to be under the influence of drugs. On the same date, SSA conducted an unannounced visit at the home of the paternal grandmother. M.C. was not home, and her crib was stacked with blankets. The paternal grandmother claimed that K.L. had taken M.C. to the maternal great-grandmother's home, which was 10 minutes away. K.L. was told to return M.C., but delayed 40 minutes in returning. The paternal grandmother was reminded that M.C. was not allowed to be taken to K.L.'s home.

DPSS was concerned that background checks had not been completed for the visitation monitors and M.C. was being transported by people who had not been authorized for unsupervised time. DPSS requested that only the paternal grandmother and Vicky monitor visits until other family members could be cleared.

On March 24, 2015, DPSS learned that M.C. was with K.L. at her home in Riverside County. A DPSS social worker made an unannounced visit to K.L.'s home and found M.C. there. K.L. claimed that she was caring for M.C. in place of the paternal grandmother. Earlier that day, Mother and Michael W. had taken M.C. to the pharmacy. The paternal grandmother confirmed she had left M.C. at the maternal great-grandmother's home, but claimed she did not know that M.C. was transported to Riverside County.

DPSS removed M.C. from the paternal grandmother's care and placed her in a confidential foster home. K.L. admitted that she allowed Mother and M.C. into her

home but claimed she was authorized to do so, despite information to the contrary. DPSS began assessing K.L.'s home for placement of M.C.

In March 2015, Mother completed a substance abuse treatment program. She was referred to an aftercare substance abuse program. She was not allowed to return after two sessions due to her attendance. She also missed a drug test. As a result, DPSS recommended continued monitored visits for Mother.

## **V.**

### **K.L.'s First Section 388 Petition; June 2015 Status Review Report**

In an addendum report dated April 13, 2015, DPSS recommended transferring the case back to Orange County based on reports that Mother was living with relatives in Newport Beach and Father was living with his grandmother in Glendora (which DPSS mistakenly believed to be in Orange County). Attached to that report was a letter, dated December 16, 2014, from K.L. asking that M.C. be placed in her home. The juvenile court denied the motion to transfer and scheduled the 12-month review hearing to be held in Riverside County. M.C. remained in the confidential foster home.

In May 2015, K.L. filed a petition under section 388 requesting the court place M.C. in her care or grant her unsupervised weekend and overnight visits (K.L.'s First Section 388 Petition). K.L.'s First Section 388 Petition alleged that M.C.'s removal from the paternal grandmother's care and placement in a foster home constituted changed circumstances.

In a declaration presented with the K.L.'s First Section 388 Petition, K.L. stated that she had "provided for the daily physical and emotional needs of M[C.] from November 2014 to March 24, 2015" and "was responsible for establishing M[C.]'s routine, feeding her, putting her down for naps and bathing her." K.L. claimed that since being placed in foster care, M.C. was "in distress and unhappy," was "confused," and "acts out." K.L. acknowledged her criminal history, which included three charges for



being under the influence of and/or in possession of drugs. K.L. stated her last drug charge was 12 years ago and, at the time of the criminal charges, she was in the process of getting a divorce and made bad decisions.

K.L. also filed a request for de facto parent status.<sup>3</sup> The juvenile court set a hearing on K.L.'s First Section 388 Petition and request for de facto parent status for June 16, 2015 at the same time as the 12-month review hearing.

In the status review report dated June 16, 2015 and the addendum reports (the June 16 Report), DPSS recommended termination of family reunification services because Mother and Father continued to abuse drugs, were not participating in substance abuse programs, and were not forthcoming about their living situation. On May 11, 2015, Mother tested positive for methamphetamine and opiates. She had missed some random drug tests and refused to submit to on-demand tests. On May 19, 2015, Mother tested positive for heroin. Mother did not provide proof that she had attended Narcotics Anonymous (NA) meetings after April 4, 2015. Mother was defensive and argumentative with the assigned social worker when discussing the positive drug test results. Mother showed the social worker empty prescription bottles for methadone, Norco, amphetamine salts, diazepam, and Valium. Mother claimed to have been prescribed the drugs for medical issues.

The June 16 Report reported that on June 1, 2015, during a visit with M.C., Mother and Father threatened to bomb the DPSS building. Law enforcement responded and the building had to be evacuated for two hours. Mother and Father also threatened DPSS social workers and office staff. Due to the threats, Mother, Father, and K.L. were not allowed to visit M.C. at the DPSS office.

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<sup>3</sup> “‘De facto parent’ means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child’s physical and psychological needs for care and affection, and who has assumed that role for a substantial period.” (Cal. Rules of Court, rule 5.502(10).)

According to the June 16 Report, Mother had been referred to counseling services in April 2015, but she had not submitted confirmation of enrollment. Mother told the assigned social worker that she had moved out of K.L.'s home to allow the home to be assessed for placement of M.C. But Mother continued to work at K.L.'s home.

In sum, the June 16 Report stated that Mother and Father continued to abuse drugs, and they failed to participate in drug treatment programs. Mother also appeared to be under the influence of drugs at some visits as her speech was slurred and she fell asleep while speaking. Mother and Father had not been forthcoming about their living situation and participation in their case plan, and had failed to participate in random drug tests. The June 16 Report stated: "[M]other has made some strides towards stabilizing her life but she has not yet completed her case plan services and there is concern that . . . although she reports she is in services, there is no proof that she is currently participating."

DPSS reported that M.C. was doing well in her foster home. The foster parents were nurturing, they provided for M.C.'s emotional, educational, and physical needs, and she was thriving in the home. M.C. was adjusting well and appeared to have bonded with the foster parents and their children.

On June 16, 2015, the juvenile court granted K.L.'s First Section 388 Petition in part by authorizing K.L. weekly supervised visits. The court denied her request for placement, overnight visits, and weekend visits. The court continued the 12-month review hearing and K.L.'s request for de facto parent status to July 23, 2015.

## **VI.**

### **Twelve-month Review Hearing**

In an addendum report dated July 23, 2015, DPSS reported that K.L. began weekly scheduled visits with M.C. on June 25. K.L. arrived on time to each visit and interacted appropriately with M.C., although, during one visit, K.L. responded to text messages. DPSS had recently been notified that Michael W. had been denied an

exemption because of his criminal record. DPSS remained concerned about K.L.'s ability to adequately protect M.C. "due to the part [K.L.] may have played to the contribution of M[C.]'s current dependency." DPSS also expressed concern that K.L. would not pass an adoption evaluation.

The July 23 report related an interview, conducted on June 25, 2015, between the assigned social worker and the paternal grandmother. During the interview, the paternal grandmother stated that placing M.C. in the care of maternal relatives would be a "huge mistake" because "[t]he whole family is toxic." The paternal grandmother stated the maternal relatives would lie and manipulate to get what they want.

At the 12-month review hearing on July 23, 2015, the juvenile court found that returning M.C. to the custody of either parent would create a substantial risk of detriment to M.C., and that M.C.'s current placement was appropriate. The court ordered Mother and Father to participate in psychological evaluations and ordered DPSS to file a motion to transfer the case back to Orange County because Mother had provided an address in Orange County. The court ordered continued family reunification services, scheduled an 18-month review hearing, and scheduled a hearing to transfer the case back to Orange County. The court authorized increased visits for K.L., Mother, and Father, and denied K.L.'s request for de facto parent status. The court also denied the foster parents' request for de facto parent status.

## **VII.**

### **Transfer Back to Orange County; Mother's Motion to Have M.C. Placed with K.L; K.L.'s Second Section 388 Petition**

In August 2015, the case was transferred back to the Orange County Juvenile Court. In September, the juvenile court adopted a case plan for Mother and Father and ordered SSA to assess M.C.'s maternal cousins for placement. An 18-month

review hearing was scheduled for October 30, 2015. The court requested that SSA assess K.L.'s home for placement.

Mother filed a motion to have M.C. placed with K.L. The motion asserted, "[M.C.] has a very strong bond with [K.L.] and [K.L.] has played an active role in the child's life since she was born." The motion claimed that DPSS had certified K.L.'s home and found it to be satisfactory.

In an interim review report dated September 17, 2015, SSA clarified that K.L.'s home had not been approved for placement because it was the home of Michael W., and he was living there. Also, Michael W. had a criminal record that could not be exempted. K.L. had a history of substance abuse which, SSA reported, was another reason for not placing M.C. in her care. The juvenile court denied Mother's motion without prejudice.

In October 2015, K.L. filed a second petition under section 388 requesting that M.C. be placed with her. K.L. contended she had been approved for placement by DPSS. In a status review report dated October 30, 2015, SSA reported that an evaluation of K.L.'s home for possible placement was underway.

In the October 30 report, SSA recommended the termination of reunification services and the scheduling of a hearing under section 366.26. Mother had enrolled again in a substance abuse treatment program, but had not resolved her drug problem and declined an inpatient drug abuse treatment program. Mother had provided proof of attending 17 NA meetings from August 29 through September 26, 2015. In October, Mother had completed the intake interview for an inpatient treatment program but had declined to enter the program. She told the assigned social worker she had "screwed up" and acknowledged relapsing. Mother said that after relapsing, she had been doing everything she was supposed to do to have M.C. returned to her.

In the October 30 report, SSA described Mother's cooperation with the case plan and efforts and progress toward alleviating or mitigating the causes necessitating

court involvement as “minimal” (capitalization omitted). Father’s cooperation and efforts were described as “none” (capitalization omitted). Nonetheless, SSA increased Mother’s visitation from two hours to three hours each visit. M.C. continued to thrive in her foster home and was meeting all of her developmental milestones.

The 18-month review hearing was conducted on November 4, 2015. Mother stipulated to termination of reunification services, and K.L. withdrew her second section 388 petition. The juvenile court terminated family reunification services to Mother and Father and set a hearing under section 366.26. The court found that returning M.C. to the custody of Mother or Father would create a substantial risk of detriment to the safety, protection, and physical or emotional well-being of M.C., and that reasonable services had been provided. The court ordered continued funding for Mother’s drug testing, increased Mother’s visitation to 12 hours of supervised visits, and allowed K.L. to supervise six hours of Mother’s visits. K.L. was to provide SSA with an update of Mother’s visits every Monday.

In December 2015, K.L. filed another petition under section 388 to change a court order. K.L. again requested that M.C. be placed with her. On December 17, 2015, the juvenile court summarily denied K.L.’s section 388 petition. K.L.’s appeal from the order denying K.L.’s section 388 petition is case No. G052998.

## **VIII.**

### **SSA’s Section 388 Petition; Mother’s Section 388 Petition**

On January 11, 2016, SSA filed a petition under section 388 requesting the juvenile court to restrict Mother’s visits to six hours weekly due to changed circumstances (SSA’s Section 388 Petition). SSA’s Section 388 Petition alleged that Mother had reported giving birth in her home. The day after birth, the baby was admitted to the hospital and tested positive for opiates. SSA alleged that Mother had not tested positive for methadone during her random drug tests. The juvenile court granted SSA’s Section 388 Petition, pending a hearing, which was scheduled for February 4, 2016.

On January 14, 2016, Mother filed a section 388 petition requesting the juvenile court to change the order terminating reunification services. Mother requested more family reunification services, unmonitored or overnight visits with M.C., or custody of M.C. As changed circumstances, Mother alleged: “Mother is maintaining her sobriety by attending NA meetings approximately 3 times a week. She is on her 8th step. She is visiting consistently with [M.C.] for 12 hours a week since 11/4/2015 and the visits are going very well and no concerns [*sic*]. She is very bonded with [M.C.]. She completed phase 1 of her second substance abuse program.” Mother alleged that granting her request would be better for M.C. because “Mother & [M.C.] are completely bonded as evidenced by the visits and the attached pictures. Mother has been appropriate with [M.C.], providing for her nutritional & entertainment needs during visits. Mother also has provided for [M.C.]’s future by obtaining a Gerber Plan. Mother loves [M.C.] and would like to have her returned to her.”

The juvenile court conducted a “prima facie proceeding” on Mother’s section 388 petition on January 21, 2016. The court asked Mother’s counsel whether she wanted to add anything to the section 388 petition. In response, Mother’s counsel confirmed that Mother had given birth and the baby tested positive for opiates. Counsel stated: “I should let the court know that [M]other tested the next day and she tested clean for all drugs, so I believe that [Mother] is still maintaining her sobriety. She’s going to be completing the second phase of her substance abuse program. She’s looking into going into outpatient. She says that there is a bed for her starting in February. [¶] She’s still testing clean. She’s still going to N.A. meetings. She’s still working with a sponsor. She’s still visiting with M[C.] and I believe it would be in the best interest [of] the child if the court would grant a hearing on her 388.”

M.C.’s counsel argued: “I do not believe there is prima facie evidence. I think that the evidence is changing, at best. I understand that the case law directs the court to liberally construe these petitions in favor of setting a hearing, but I don’t think,

even with the most liberal of construction, the court could find prima facie in this case.

[¶] I think it's significant that [M]other did just have a new baby that had a positive toxicology screen for opiates. I think that contradicts everything in [M]other's petition that she alleges that she is clean and sober. I think it's just more of the same of [M]other being in denial and wanting to be clean and sober, but not . . . being able to maintain her sobriety."

Counsel for SSA added: "Mother had 18 months of services between Riverside County and Orange County. Unfortunately, she couldn't get it together in that span of time and we terminated services back in November. [¶] I find it commend[a]ble that she's still taking steps to maintain her sobriety and I hope that she continues to do so, but as stated in the four corners of this 388, . . . it clearly demonstrates that the circumstances are changing and that they have not changed, especially due to the fact that she just had a child that tested positive for opiates and was exhibiting withdrawal symptoms."

Mother's counsel, after speaking with Mother, stated: "[A]s I stated earlier, the baby did test positive for opiates; however, they did not know if it was for heroin. Mother is currently taking methadone and she currently has a prescription for methadone. I have a doctor's letter. She's also getting a doctor's letter from her Ob-Gyn. We're trying to figure out how the baby tested positive for opiates, but [Mother] tests clean for all drugs." Counsel posited that the baby's positive opiate test might have been from heroin, hydrocodone, or methadone. After speaking again with Mother, counsel explained that Mother did not take methadone every day, but only as needed for pain resulting from an (unidentified) autoimmune disease.

In making its ruling, the juvenile court explained that once reunification services are terminated, the focus of the case shifts from family reunification to the best interest of the child. The court had to determine whether circumstances "actually, changed" and were not simply "changing." The court found that circumstances had not

changed: “[W]e have a newborn baby who was born with opiates in [the baby’s] system and somehow, [M]other doesn’t test positive for opiates, but the baby does, and we don’t know what kinds of opiates those are; but again, I’m struck by the fact that this is one of [M]other’s drugs of choice we’re seeing here. That’s problematic. [¶] We don’t have a changed circumstance here. Certainly, the conduct, in terms of participating in programs and that sort of thing, would make us want to, you know, cheer her on and want her to do well, but that doesn’t establish to this court that we have a circumstance that has, actually, changed at th[is] stage. Perhaps with more work and with more treatment and with, perhaps, somebody chatting with her about the wisdom of continuing to use a drug . . . that is a drug of choice that she abused[.] . . . [P]erhaps, she could move forward, but right now that’s not where we are.” The court also found that granting the relief sought by Mother would not be in M.C.’s best interest.

The court denied Mother’s section 388 petition without an evidentiary hearing. Mother timely appealed from the order denying her petition.

## **DISCUSSION**

### **I.**

#### **Relevant Law and Standard of Review**

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent’s request. [Citation.]” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

“However, if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition.



[Citations.] The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition. [Citation.]” (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 806.) In determining whether the petition makes a prima facie showing of changed circumstances, the court may consider the case’s “entire factual and procedural history.” (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 258.)

We review the juvenile court’s summary denial of a section 388 petition under the abuse of discretion standard. (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1513; *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079; *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

## **II.**

### **The Juvenile Court Did Not Err by Denying Mother’s Section 388 Petition Without an Evidentiary Hearing.**

#### *A. The Juvenile Court Did Not Assume the Truth of SSA’s Section 388 Petition.*

We first address Mother’s contention that the juvenile court assumed as true the allegations of SSA’s Section 388 Petition and wrongly used the allegations in that petition as the basis for denying Mother’s section 388 petition. Mother argues that by “[u]sing the information from SSA’s section 388 petition,” the juvenile court displayed bias against her and in favor of SSA.

The record demonstrates that Mother is incorrect. At the hearing, the court asked Mother’s counsel if she had anything to add to the petition. In response, Mother’s counsel stated that Mother had given birth and the baby had tested positive for opiates. Counsel stated that Mother tested clean the day after giving birth, but Mother was currently taking methadone for pain. The juvenile court could accept those statements as binding admissions. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1371, fn. 14.) The

court did not say or do anything to suggest it was assuming the truth of the allegations of SSA's Section 388 Petition and relying on its allegations to deny Mother's petition.

*B. Mother Did Not Make a Prima Facie Showing of  
Changed Circumstances.*

“To support a section 388 petition, the change in circumstances must be substantial.” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.) Circumstances must be *changed*, not *changing*. (*Ibid.*) Here, the juvenile court did not err by finding that Mother had, at best, shown changing circumstances.

In determining whether the petition makes a prima facie showing of changed circumstances, the court may consider the case's “entire factual and procedural history.” (*In re Jackson W.*, *supra*, 184 Cal.App.4th at p. 258.) That history started with the Dependency Petition, which alleged (1) Mother had an unresolved substance abuse problem involving the abuse of opiates, methamphetamine, and marijuana; (2) Mother had a long history of heroin abuse; (3) Mother had been taking methadone; and (4) Mother had exposed M.C. to drug use. The juvenile court sustained those allegations at the jurisdictional/dispositional hearing in June 2014.

Mother had weaned herself off of methadone by August 2014, but then resumed drug use and tested positive for morphine and heroin on five separate occasions. Mother blamed the drug testing lab before admitting she had relapsed.

Mother enrolled in perinatal drug treatment in June 2014, but did not complete the program. In October 2014, Mother enrolled in a substance abuse program, and, in March 2015, completed the program despite having missed 19 treatment classes. Nonetheless, between December 2014 and January 2015, Mother missed four drug tests. In January 2015, Mother's substance abuse counselor reported that Mother appeared sleepy during a session, and Mother left the drug treatment program for an hour after learning she would have to be drug tested. Two months after completing the substance abuse program, Mother resumed drug use. In May 2015, Mother tested positive for

methamphetamine, heroin, and opiates. She missed some random drug tests and refused to submit to on-demand tests. Mother appeared to be under the influence of drugs at visits with M.C.

Although Mother diligently attended NA meetings in August and September 2015, she declined to enroll in an inpatient drug treatment program after completing the intake interview. Mother told the assigned social worker she had “screwed up” by not entering the inpatient program and she had relapsed.

Thus, as of the time of the 18-month review hearing in November 2015, Mother had relapsed and had not resolved one of the major reasons for which M.C. had been taken into protective custody. The changed circumstance alleged by Mother two months later in her section 388 petition was that she was “maintaining her sobriety by attending NA meetings approximately 3 times a week” and was on the eighth step of a 12-step program. In a supporting declaration, Mother stated that in September 2015, she had been admitted to a substance use disorder program; on November 19, she completed phase one of the program; and as of December 31, she was halfway through the six-month program.

Mother’s allegations of sobriety are undercut by the fact that Mother gave birth in January 2016 and the baby tested positive for opiates. Although Mother contended she tested clean the day after giving birth, the juvenile court could view those events as another relapse providing another reason for denying Mother’s section 388 petition.

Assuming, however, that there was an entirely innocent reason for the baby’s positive opiate test, and that Mother had not relapsed, her recent sobriety reflected changing rather than changed circumstances. (*In re Ernesto R.*, *supra*, 230 Cal.App.4th at p. 223.) Mother was in the middle, not at the end, of a six-month substance abuse program. Even completion of a substance abuse program at a late stage in the dependency proceedings is not a substantial change in circumstances. (*Ibid.*) Mother had

relapsed previously after completing a substance abuse program, and her several months of sobriety were “not enough to reassure the juvenile court that the most recent relapse would be h[er] last.” (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424 [200 days of sobriety not enough].) “[Mother] is in the early stages of recovery, and is still addressing a chronic substance abuse problem.” (*In re Ernesto R.*, *supra*, at p. 223; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 [“It is the nature of addiction that one must be ‘clean’ for a much longer period than 120 days to show real reform.”].) The juvenile court did not abuse its discretion by finding that Mother failed to make a prima facie showing of *changed* circumstances justifying her section 388 petition.

*C. Mother Did Not Make a Prima Facie Showing That  
Granting the Requested Relief Would Be in  
M.C.’s Best Interest.*

In addition, the juvenile court did not abuse its discretion by finding that Mother had failed to make a prima facie showing that granting the relief requested would be in M.C.’s best interest. Once reunification services are terminated, the juvenile court’s focus shifts from family reunification to promoting the child’s needs for permanency and stability. (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) “[A]fter reunification services have terminated, a parent’s petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child’s need for permanency and stability.” (*Ibid.*)

M.C. had been taken into protective custody in April 2014. When the hearing was held on Mother’s section 388 petition, M.C. had been in the dependency system for over 20 months. M.C. was thriving in her foster home. Her foster parents loved her and provided for her every need. At this stage, M.C. needed and deserved permanency and stability. Reinstating reunification services, after 18 months of services had failed, under the hope that maybe this time Mother would remain sober long enough to be able to protect M.C. from harm, would not advance M.C.’s interest.

**DISPOSITION**

The order denying Mother's section 388 petition is affirmed.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.